

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Mark P. Murphy,

Plaintiff,

ORDER

-against-

20 Civ. 10855 (NSR) (AEK)

Det. Joseph Bracero, et al.,

Defendants.

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THE HONORABLE ANDREW E. KRAUSE, U.S.M.J.

Plaintiff has filed two documents, one styled as a “Motion to Dismiss Deposition and All Arguments [*sic*],” and the other as a “Motion for Summary Judgment.” *See* ECF Nos. 35-36. Both motions arise out of Defendants’ alleged failure to appear for a deposition that was “scheduled for December 16, 2021 at 11:00 a.m. and for not rescheduling with the Court for a new date nor informing [Plaintiff] of this cancellation.” ECF No. 35. According to Defendants, the deposition in question was Plaintiff’s deposition, and the “failure to appear” was the result of Defendants’ inability, despite numerous efforts, to make arrangements for the deposition with the correctional facility where Plaintiff is housed. *See* ECF No. 37.

Before referring this matter to the undersigned for general pretrial supervision on December 17, 2021, the Honorable Nelson S. Román signed a civil case discovery plan and scheduling order that set a deadline of August 1, 2022 for completion of non-expert depositions. ECF No. 31. The version entered by Judge Román is consistent with the proposed schedule submitted by Plaintiff himself on November 24, 2021, *see* ECF No. 27, rather than a version with shorter deadlines that had previously been proposed by Defendants, *see* ECF No. 28. In light of the current schedule in this matter, there is no prejudice to Plaintiff arising from the non-

occurrence of the deposition on December 16, 2021; moreover, it appears as though Defendants were not at fault for the deposition not proceeding on the date on which it had been noticed. And in any event, the motions that Plaintiff has filed to attempt to address this discovery issue are not properly filed as dispositive motions. Under the circumstances, Plaintiff's motions, which the Court construes as discovery-related motions rather than dispositive motions, are hereby **DENIED.**

This matter of deposition scheduling, as well as any other pending disputes relating to discovery, will be addressed in further detail at the upcoming teleconference scheduled for January 31, 2022 at 11:30 a.m. In the meantime, if any other discovery disputes arise, the parties are directed to follow the procedures set forth in the Court's standard discovery protocol order, docketed at ECF No. 33, to bring those issues to the Court's attention.

The Clerk of the Court is respectfully requested to terminate the motions at ECF Nos. 35 and 36 and to mail a copy of this Order, as well as the Order at ECF No. 33, to *pro se* Plaintiff.

Dated: December 28, 2021
White Plains, New York

SO ORDERED.



ANDREW E. KRAUSE
United States Magistrate Judge